



GUIDE TO appealing against a PCSW decision

Colophon

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Final note

Editor-in-Chief: PPS SI, Boulevard du Jardin Botanique 50, box 165, B-1000 Brussels

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GUIDE TO APPEALING AGAINST A PCSW DECISION in thirteen steps...

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What should I do about a PCSW decision?

You can appeal to the employment tribunal if you do not agree with the PCSW decision.

This should not prevent you from also requesting an interview with the social worker so you can receive further explanations about the decision.



How do I submit my appeal?

The appeal must be submitted either:

- verbally at the clerk's office of the competent employment tribunal (the clerk's offices often have pre-printed documents that you simply need to complete). You must have the PCSW decision with you.
- by means of a written request. The written appeal may consist of a letter addressed to the employment tribunal by registered mail. This provides proof that the appeal was filed within the time limit. This letter must as a minimum mention the name and address of the person who submitted the appeal and the PCSW against which the appeal is directed. In principle, the court sends an acknowledgment of receipt of this appeal within 15 days.

- o The appeal must be dated and signed.

- o It is preferable to attach a copy of the contested decision.

- o The appeal does not need to be reasoned, even summarily.

- o Sometimes it is better not to develop the arguments for appeal too much without a thorough analysis of the problem and without being aware of the PCSW administrative dossier (which will be communicated as part of the procedure).

- o The arguments can be developed and supporting documents can be filed during the proceedings.

To which court should I submit my appeal?

- Appeals by the applicant against a PCSW decision concerning the granting of social assistance or social integration revenue must be lodged with the employment tribunal.
- The competent employment tribunal is that in the place of domicile of the plaintiff (or in the place of residence if they have no domicile). For any information on this subject, please consult the website of the PPS Justice (www.just.fgov.be "judicial addresses" section).
- The PCSW is obliged to mention in its decision the address of the court with which the appeal is to be lodged.

Within which deadline do I submit my appeal?

- For the right to social integration (social integration revenue) and social assistance, the appeal must be filed within three months.
- The deadline starts from the notification of the decision, i.e.
 - from the date of the registered letter. The date to be taken into account for the submission of the appeal will be the date of posting of the registered letter at the post office. (date of the receipt stamp of the registered item).
 - from the date of the acknowledgement of receipt that the person must sign if the decision is delivered to them in person.

There is no decision by the PCSW. What can I do?

- An appeal can be lodged if no decision is taken within one month.
- If the PCSW does not take a decision within this one-month period, the three-month appeal period starts from the day on which the absence of a decision is established.
- There is always a way to contact the social worker in charge of the case to find out why.
- It is always possible to submit a new application to the PCSW at the same time (to safeguard your rights in case the appeal is deemed to have been submitted late).

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What can I do if the deadline for appeal has passed?

- It is no longer possible to lodge an appeal with the employment tribunal if the three-month period has expired.
- However, a new application can be submitted to the PCSW if new information arises. It is therefore pointless to resubmit the same request using the same information.
- The PCSW will have to carry out a new social investigation and make a new decision taking into account the new information. If the decision is negative, there will then be the possibility of submitting a new appeal.

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How can I submit an urgent appeal?

- If a case is very urgent, it is possible to file a summary request before the president of the employment tribunal. The assessment of urgency is made by the court.
- The urgency must be justified. Given the urgency, the president of the court will make a provisional decision in summary proceedings; a decision can be obtained in a few days or even less in cases of extreme urgency. This decision is without prejudice to the merits.
- The involvement of a lawyer is necessary for this procedure.
- During the appeal period, it is possible to request urgent social assistance, such as food packages and financial aid. This is a life emergency, not an administrative procedure emergency.

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If I launch an appeal procedure before the employment tribunal, am I entitled to a lawyer or legal aid?

- The involvement of a lawyer is not mandatory: you can defend yourself in court but it is more beneficial to have a lawyer because they know the procedure.
- Depending on resources, it is possible to use a legal aid'' lawyer, i.e. a lawyer who will be paid by the state (= Pro Deo lawyer).

- You must provide the legal aid offices, among other things, with:
 - a copy of the PCSW decision with which you do not agree
 - proof of resources and their amount and, if applicable, a sworn declaration of no income
 - household composition
- In matters relating to social integration revenue and social assistance, it is also possible to be assisted or represented by a delegate from a (non-profit) organisation whose purpose is to defend the interests of the most deprived. For example, a social worker from a social service.
 - This person must have written power of attorney, signed by the interested party, authorising them to represent the plaintiff in court.
 - It must submit a copy of its organisation's bylaws to the court.



How will my appeal process work?

Après l'introduction du recours, il faut :

- Prepare the arguments to be made.
- Gather the various pieces of evidence required and the acknowledgement of receipt (proof of the date the person attended the PCSW).
- Provide any arguments or documents that will be used as early as possible and before the hearing:
 - to the lawyer if you have one or to the PCSW,
 - to the labour inspectorate prior to the hearing.
- the PCSW will have to file its administrative dossier with the court.

The dossier filed by the PCSW can be consulted at the court registry: consult it or request a copy.

The PCSW may also provide a copy of the dossier.



What role can the social service of my PCSW play in the procedure?

It is possible that the social service close to the person being assisted may be able to contribute to:

- preparing the dossier: providing the person or the lawyer with the elements to argue their defence = collecting the different elements of proof for their rights.
- determining the importance of documents and evidence.

This is not always the case since there is a dispute between the applicant and the PCSW. The court conducts a thorough review of the dossier; it verifies whether all the conditions for obtaining the requested assistance have been met.

If the PCSW decision is based on a single condition that is not met, the court does not just examine this single condition, but examines all the conditions. You must therefore be prepared to justify yourself on other elements (conditions) than those included in the PCSW decision.



How much will it cost me to appeal?

The procedure is completely free of charge, if you are right or even if the PCSW is right, except for frivolous and vexatious procedures.



How does my PCSW enforce the court's decision?

It all depends on the decision made by the court.

There are two possible hypotheses:

a) Either the court has pronounced what is called "provisional execution of the judgment, without guarantee or ring-fencing, despite any appeal" = the PCSW is obliged to execute the judgment and pay the aid in accordance with the ruling, even if it goes to appeal. They will have to pay the aid during the entire appeal process.

Please note that if the industrial tribunal reviews the court's judgment and decides that the PCSW should not be ordered to pay aid, the person may have to pay back the aid they have received. In this case, each PCSW will make its own assessment in the light of the individual case.

b) Or the court has not granted the provisional enforcement of its judgment. In this case, the PCSW is not obliged to pay the aid in accordance with the ruling if it lodges an appeal against the decision.

If the PCSW does not lodge an appeal within one month, the judgment will be final. It is therefore very important to ask the employment tribunal to grant the "provisional enforcement" of its judgment because the court cannot grant it *ex officio*. If the court convicts the PCSW, the PCSW will have to grant the aid mentioned in the judgment.

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